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**United States Department of Energy
Office of Hearings and Appeals**

In the Matter of: Personnel Security Hearing)	
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Filing Date: July 17, 2017)	Case No.: PSH-17-0046
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_____)	

Issued: September 14, 2017

Administrative Judge Decision

William M. Schwartz, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (hereinafter referred to as “the individual”) to hold an access authorization¹ under the Department of Energy’s (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled “General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.” As discussed below, after carefully considering the record before me in light of the relevant regulations and the *Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, The White House (December 29, 2005) (Adjudicative Guidelines), I conclude that the individual should be granted an access authorization.

I. Background

The individual is employed by a DOE contractor that requested a DOE security clearance on his behalf. While investigating his background, the Local Security Office (LSO) received potentially derogatory information regarding the individual’s alcohol use. In order to address those concerns, the LSO summoned the individual for a personnel security interview (PSI) in January 2017. Following the January 2017 PSI, the LSO sent the individual for an evaluation with a DOE consultant-psychologist (DOE psychologist).

On June 5, 2017, the LSO sent the individual a letter (Notification Letter) advising him that the DOE possessed reliable information that created substantial doubt regarding his eligibility to hold an access authorization. In an attachment to the Notification Letter, the LSO explained that the derogatory information fell within the purview of Guideline G (alcohol consumption) of the Adjudicative Guidelines.

¹ Access authorization is defined as “an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material.” 10 C.F.R. § 710.5(a). Such authorization will be referred to variously in this Decision as access authorization or security clearance.

Upon receipt of the Notification Letter, the individual exercised his right under the Part 710 regulations by requesting an administrative review hearing. The Director of the Office of Hearings and Appeals (OHA) appointed me the Administrative Judge in the case, and I subsequently conducted an administrative hearing in the matter. At the hearing, the individual presented the testimony of four witnesses and testified on his own behalf. The DOE Counsel presented the testimony of the DOE psychologist who had evaluated the individual. The DOE submitted seven exhibits (Exhibits 1-7) into the record, and the individual tendered nine exhibits (Exhibits A-I). The exhibits will be cited in the Decision as “Ex.” followed by the appropriate numeric or alphabetic designation. The hearing transcript in the case will be cited as “Tr.” followed by the relevant page number.²

II. Regulatory Standard

A. Individual’s Burden

A DOE administrative review proceeding under Part 710 is not a criminal matter, where the government has the burden of proving the defendant guilty beyond a reasonable doubt. Rather, the standard in this proceeding places the burden on the individual because it is designed to protect national security interests. This is not an easy burden for the individual to sustain. The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) (“clearly consistent with the national interest” standard for granting security clearances indicates “that security determinations should err, if they must, on the side of denials”); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

The individual must come forward at the hearing with evidence to convince the DOE that granting his access authorization “will not endanger the common defense and security and will be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). The individual is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

B. Basis for the Administrative Judge’s Decision

In personnel security cases arising under Part 710, it is my role as the Administrative Judge to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person’s access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). I am instructed by the regulations to resolve any doubt as to a person’s access authorization eligibility in favor of the national security. *Id.*

III. Notification Letter and Associated Security Concerns

As previously mentioned, the Notification Letter included a statement of derogatory information that raised concerns about the individual’s eligibility for access authorization. The information in the letter

² OHA decisions are available on the OHA website at www.energy.gov. A decision may be accessed by entering the case number in the search engine at www.oa.gov/search.htm.

specifically cites Guideline G of the Adjudicative Guidelines, which relates to security risks arising from alcohol consumption. Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness. *See* Guideline G at ¶ 21.

In citing Guideline G, the LSO stated that it was relying upon the March 2017 written evaluation by the DOE psychologist. The LSO stated that the DOE psychologist had concluded that the individual met the diagnostic criteria for an Unspecified Alcohol Related Disorder set forth in the *Diagnostic Statistical Manual of Mental Disorders, of the American Psychiatric Association, Fifth Edition (DSM-5)*, without adequate evidence of rehabilitation or reformation. The LSO noted that the psychologist concluded that the individual was a habitual or binge consumer of alcohol to the point of impaired judgment. The LSO alleged that the individual was arrested and charged with Driving Under the Influence in 2011. The LSO additionally contended that the individual acknowledged during the PSI that he consumes 12 twelve-ounce beers, 8 to 10 times per year and becomes intoxicated each time. Further, the LSO contended that he admitted to drinking 6-12 drinks in a typical week. Ex. 1. I conclude that, under the circumstances, Guideline G was properly invoked.

IV. Findings of Fact

In 2011, the individual was arrested for Driving Under the Influence (DUI). Ex. 6 at 42. This charge was eventually reduced to Reckless Driving and dismissed. Ex. C. The individual reported this incident when completing his Electronic Questionnaire for Investigations Processing (e-QIP) in April 2016. Ex. 6 at 42.

In January 2017, the LSO conducted a PSI with the individual. Ex. 7. During the PSI, the individual stated that prior to his DUI arrest, he had consumed approximately 10 twelve-ounce beers at a bar. Ex. 7 at 64-65. He further stated that he consumes approximately 12 twelve-ounce beers about 8 to 10 times per year, and he becomes intoxicated when he does so. *Id.* at 126.

Following the PSI, the LSO referred the individual to the DOE psychologist for evaluation. The evaluation took place in February 2017. Ex. 4. During the evaluation, the individual informed the psychologist that he typically does not consume alcohol on Sunday through Wednesday as he needs to wake up early for work; however, he commonly drinks approximately 6 to 12 beers twice a week, on the weekends. *Id.* at 3. The psychologist noted that the individual characterized his drinking as “non-problematic” and indicated that alcohol does not adversely impact his life. *Id.* at 5, 9. The psychologist reported that he educated the individual about the boundaries of non-risky alcohol consumption and stated that he explained that the individual does not comply with the common guideline of “no more than 4 drinks per occasion” as he typically consumes 6 to 12 beers per occasion. *Id.* at 7. The psychologist indicated that the individual stated that he would conform to this guideline. *Id.*

The DOE psychologist ultimately diagnosed the individual with an Unspecified Alcohol-Related Disorder pursuant to the DSM-5. *Id.* at 10. He elaborated, stating that the individual is a “habitual or binge consumer of alcohol to the point of impaired judgment.” *Id.* at 11. The psychologist determined that in order to show adequate evidence of reformation and rehabilitation, the individual, at a minimum, needed to abide by the guidelines for non-risky alcohol consumption for a period of at least 6 months. *Id.* Additionally, he recommended that the individual discuss his alcohol consumption with a physician and/or mental health professional and follow all recommendations of that practitioner. *Id.* The

psychologist stated that the most preferable course of action would be abstinence from alcohol for a period of at least 3 months. *Id.*

V. Analysis

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the witnesses presented at the hearing. In resolving the question of the individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c) and the Adjudicative Guidelines. After due deliberation, I have determined that the individual's security clearance should be granted. I find that granting the individual's DOE security clearance will not endanger the common defense and security, and is clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings that I make in support of this decision are discussed below.

At the hearing, the individual called his own counselor, with whom he met for three sessions per the recommendation of the DOE psychologist. Tr. at 29, 31; Ex. A at 7. The counselor documented that at the time of her sessions with the individual, he had attended one in-person Alcoholics Anonymous (AA) meeting, and acknowledged that he was benefiting from online AA meetings. Ex. A at 7. The counselor testified that she had read the DOE psychologist's report and agreed that the individual was binge drinking and drinking to the point of impaired judgment. Tr. at 31, 42-43. She stated that she diagnosed the individual with Mild Alcohol Use Disorder pursuant to the DSM-5 as he met two of the diagnostic criteria for the condition. *Id.* at 33. She indicated that she had not recommended that the individual completely abstain from alcohol, but she had recommended that he (1) attend a driving impairment class, (2) continue to attend AA meetings, and (3) return to see her if he felt the need for therapy. *Id.* at 33, 43. When asked about her opinion regarding the efficacy of the online AA sessions, she stated that while face-to-face sessions are better than online sessions, online sessions were better than no sessions at all. *Id.* at 45. In response to questioning by the DOE psychologist, the counselor expressed her opinion that, at the time of their sessions, the individual was at a pre-contemplative stage of change readiness, as he was not yet considering making changes in his life with respect to his use of alcohol. *Id.* at 38, 40.

The individual's girlfriend of approximately three and a half years, with whom he resides, also testified. *Id.* at 19, 20, 51. She stated that she did not think that the individual ever had a problem with his alcohol consumption, but when he received the Notification Letter on June 10, 2017, he stopped drinking. *Id.* at 20-21. She clarified that she knew this was the exact date the individual stopped as she documented it on the calendar. *Id.* at 21. She stated that completely abstaining from alcohol had not been difficult for the individual, and he understands that he needed to alter his alcohol consumption. *Id.* at 54, 57. She further explained that she also abstains from alcohol in order to support him and has noticed that "it [is] better" since they have stopped drinking. *Id.* at 25, 54. Finally, she attested to the individual's commitment to his online AA meetings, stating that he engages in a session every night. *Id.* at 23.

Echoing his girlfriend's testimony, the individual testified that he stopped consuming alcohol on the day he received the Notification Letter, June 10, 2017, and intends to continue to abstain in the future. *Id.* at 61, 68. The individual explained that in addition to complete abstinence, he has attended online AA meetings on a daily basis since mid-June 2017. *Id.* at 79-80; Ex. I. He additionally stated that he has attended three or four in-person AA meetings, but the sessions held in his area have since closed down, and because he lives in a rural area, he would have to travel a great distance to attend in-person meetings. Tr. at 62, 70. When asked about the differences between online and in-person AA meetings, the individual stated that the only difference he notices is that more women attend the online sessions and

more men attend the in-person sessions. *Id.* at 76. However, he clarified that the online sessions are structured in much the same way as the in-person sessions. *Id.* at 77-78. The individual explained that he has greatly benefited from AA as he has realized that many people have stories that are similar to his own, and these stories have helped him realize that he had a problem with alcohol. *Id.* at 74-75. The individual clarified that he has studied the 12 steps of AA, has no desires or cravings for alcohol, and has not found it difficult to abstain. *Id.* at 74, 85-86.

The individual stated that while he read the DOE psychologist's report, he initially did not understand it. *Id.* at 75. However, after receiving more education, he now agrees with the diagnosis and opinion of the psychologist. *Id.* With regard to the driving impairment education class recommended by his counselor, the individual stated that he wants to attend the in-person session and has contacted the program several times, but he has not been able to reach anyone to schedule the course. *Id.* at 71, 83. The individual further clarified that since his 2011 DUI, he has not had any alcohol-related incidents. *Id.* at 59.

The DOE psychologist testified after listening to the testimony of all of the other witnesses. *Id.* at 89. He explained that based on what he heard at the hearing, the individual has gone beyond the pre-contemplative stage of change readiness, and now has moved on to the contemplative stage, where he is now beginning to make changes in his life. *Id.* at 91-92. He stated that the individual seems to be following his preferred recommendation of abstaining from alcohol and the recommendations of his counselor, with the exception of having yet to complete the driving impairment education course. *Id.* at 92-93, 96. The psychologist, nonetheless, stated that he believes that the individual will complete the course. *Id.* at 100. He stated that, in his opinion, face-to-face AA sessions had benefits beyond those available in online sessions. *Id.* at 97. Nevertheless, he acknowledged that the online program was better than no engagement in AA at all, and he stated that the individual receives valuable education from the online sessions. *Id.* at 97-98. The psychologist further noted that the individual is demonstrating good faith through his substantial efforts of abstaining from alcohol for approximately three months. *Id.* at 92. He stated that the individual is moving in the right direction, and his risk of relapse is "fairly minimal" as he has "major incentives," including this access authorization eligibility process, to remain abstinent. *Id.* at 93-94. The psychologist clarified that his original diagnosis no longer applies given the individual's abstinence and efforts toward rehabilitation. *Id.* at 96.

A. DOE Psychologist's Diagnosis

The individual has been diagnosed with an Unspecified Alcohol Related Disorder by a duly qualified psychologist. *See* Adjudicative Guidelines, Guideline G at ¶ 22(d). However, immediately after receiving the Notification Letter and the psychologist's report, the individual completely abstained from alcohol in accordance the psychologist's preferred course of recommended action. Additionally, the individual has acknowledged that his alcohol consumption was problematic, and pursuant to the psychologist's recommendation, the individual sought out counseling and, following his counselor's recommendation, has been attending daily AA sessions. *See id.* at ¶ 23(b). Although the AA sessions occur online, both the DOE psychologist and the individual's counselor consider them acceptable given the inaccessibility of face-to-face sessions due to his rural living situation. While the individual has not yet completed a driving impairment education course, as recommended by his counselor, he has been actively attempting to schedule a course, and the DOE psychologist indicated that he believes the individual will complete the course. Furthermore, the DOE psychologist indicated, at the hearing, that the individual's risk of relapse is now low and the original diagnosis no longer applies. *See id.* at ¶ 23(d). Under the particular facts of this case, I defer to the DOE psychologist's expert opinion in this case, and

further conclude that his revised opinion is consistent with the witness testimony and my observations of the individual.

B. DUI

Incidents, such as driving while under the influence, can serve as a disqualifying condition to the grant of a security clearance. *Id.* at ¶ 22(a). In this case, the individual's DUI occurred in 2011 and was eventually dismissed. The individual has not had any alcohol-related arrests or incidents in the past six years. He is actively seeking out a DUI driving education course that the psychologist believes he will attend and complete. For these reasons, I find that so much time has passed since the DUI, and it occurred under circumstances that are no longer present, that a similar incident is unlikely to recur. *See id.* at ¶ 23(a).

VI. Conclusion

In the above analysis, I have found that there was sufficient derogatory information in the possession of the DOE to raise serious security concerns under Guideline G. After considering all the relevant information, favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I find that the individual has brought forth sufficient evidence to resolve the security concerns associated with that guideline. I therefore find that granting the individual's access authorization will not endanger the common defense and is clearly consistent with the national interest. Accordingly, I have determined that the DOE should grant the individual an access authorization at this time.

William M. Schwartz
Administrative Judge
Office of Hearings and Appeals

Date: September 14, 2017